Supreme Court, U.S.
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ORIGINAL

Case No. 87-1625

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

STATE OF FLORIDA,

Petitioner,

vs.

ROBERT JOE LONG,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	PAGE(S)
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
CONCLUSION	7
CERTIFICATE OF SERVICE	8
APPENDIX	A-1

TABLE OF CITATIONS

CASE	PAGE(S)
Cannady v. State, 427 So.2d 723 (Fla. 1983)	5
Donovan v. State, 400 So.2d 1306 (Fla. 1981)	4
Edwards v. Arizona, 451 U.S. 477 (1981)	5,6
Norris v. State, 429 So.2d 688 (Fla. 1983)	4
Smith v. Illinois, 469 U.S. 91, (1984)	4
Valle v. State, 474 So.2d 796 (Fla. 1985)	5
Waterhouse v. State, 429 So.2d 301 (Fla. 1983)	5

STATEMENT OF THE CASE

Respondent accepts the Petitioner's Statement of the Case with some additions. A copy of the transcript of the complete suppression hearing is attached as an appendix and page references are made to it as well as to the record on appeal in the lower court.

On November 16, 1984, Respondent Long was arrested for the sexual battery and kidnapping of Lisa McVey. (R 816) (A 2) Although Long was the primary suspect in the series of murders which had occurred in the Tampa area, the detectives were careful not to suggest this fact to him. (R 830)(A 16) Detective Price testified that the concealment of this fact was to aid in psychologically preparing Long for the interrogation about the murders. (R 830)(A 16) The Hillsborough County Sheriff had personally selected Price to interview Long because of his skills as an interrogator.(R 831)(A 17)

Price transported Long to the sheriff's department where he and Detective Latimer conducted an extensive interrogation about the McVey case and the series of murders. Long signed a form waiving his Miranda rights and consenting to be interviewed on the Lisa McVey case. (R 821-822)(A 7-8) The form designated only the charges of sexual battery and the abduction of McVey. (R 836-837, 869-870, 2890)(A 22-23, 54-56) Long was not advised that he was a suspect in the murders. (R 836-837)(A 22-23) Price and Latimer questioned Long for over one and one-half hours, and Long confessed to the abduction and sexual battery. (R 836-870)(A 22-56)

After obtaining the McVey case confession, the detectives changed the subject to the murders and the interrogation continued, lasting over five hours. (R 837, 871)(A 23, 57) They did not inform Long of the change in subject. Instead, they used a series of psychological techniques to prepare Long emotionally to talk. Price left the room to secure photographs of five of the homicide victims who were prostitutes. (R 837-839)(A 23-25) Latimer discussed the various types of

physical evidence which can be left at a scene. (R 837-838, 875-876)(A 23-24, 61-62) This was done to suggest to Long that he may have left such evidence in the murder cases. (R 843, 876)(A 29, 62) Latimer also moved very close to Long which would have a subtly coercive effect. (R 839)(A 25) Price returned with photographs, and Long's mood seemed to change. (R 840)(A 26) Latimer asked Long if he ever picked up prostitutes. (R 840, 872)(A 26, 58) Long said he did when he lived in Miami. (R 840, 872)(A 26, 58) Latimer then asked about the Tampa area. (R 841-842, 872)(A 27-28, 58) Long said, "I'd rather not answer that." (R 841-842, 872)(A 27-28, 58) In response, Latimer confronted Long about the murders. (R 842-844, 872-873)(A 28-30, 58-59) There was no break in the interrogation. (R 879)(A 65) Latimer handed Long photographs of the victims and asked if he had seen any of them. (R 875)(A 61) Long said he had not seen any of the first four. However, he lingered on the fifth and said he may have seen her somewhere. (R 845, 875)(A 31, 61) After seeing the photographs, Long said,

> The complexion of things sure have changed since you came back into the room. I think I might need an attorney.

(R 846, 877)(A 32, 63) Before Latimer could respond (R 848)(A 34), Price interjected and said, "Nothing has changed. I am still being honest with you." (R 846)(A 32) He also asked Long, "Why would you need an attorney?" (R 856-857)(A 42-43) Price admitted that he lied to Long and responded quickly to prevent Long from having adequate time to think about a lawyer. (R 847-850)(A 33-36) At the suppression hearing, Price testified, "Nothing had changed for me. I was pursuing the interrogation." (R 847)(A 33)

Detective Price was proud of his skills as an interrogator. He admitted that he and Latimer used ten different techniques to persuade Long to continue talking. First, after Long was arrested, he was placed in the patrol car. Price told him, "I want to thank you for not hurting that little girl." (R

830-831)(A 16-17) He then left Long alone to think about the statement. (R 831)(A 17) Second, Price carefully did not let Long know he was the suspect for the murders. (R 830, 847-848)(A 16, 33-34) Third, Price let Long know that he knew something about his background by mentioning that he knew Long was from West Virginia. (R 833-834)(A 19-20) Price said this was done to start the psychological preparation of Long for the interrogation about the murders. (R 834)(A 20) Fourth, when the interrogation about the murders started, Price used the photographs of the victims for psychological impact. (R 837)(A 23) Fifth, Latimer talked about physical evidence to imply that Long had left such evidence. (R 838)(A 24) Sixth, the detectives told Long the investigation was complete when in fact they did not have a case on him for the murders at that time. (R 854)(A 40) Seventh, during the interrogation, Detective Latimer moved close to Long for a psychologically coercive effect. (R 839-840)(A 25-26) Eighth, when Long said he did not want to talk because the subject of the interview changed, Price lied to him and said nothing had changed when in fact the interrogation had shifted to the murders. (R 846-847)(A 32-33) Ninth, when Long asked for a lawyer, Price interrupted with the statement that the investigation had not changed and questioned why Long thought he would need a lawyer. (R 856)(A 42) Price admitted that his purpose was to prevent Long from thinking about a lawyer and to encourage him to continue talking. (R 849-850)(A 35-36) Tenth, Price said he used a lot of flattery on Long, too, in hopes that it would make him prone to talk about the crimes. (R 850)(A 36)

REASONS FOR DENYING THE WRIT

The petition for writ of certiorari should be denied for two reasons. First, the Supreme Court of Florida's decision is not a suitable vehicle for this Court to resolve the conflict among the jurisdictions left undecided in Smith v. Illinois, 469 U.S. 91, 96 (1984), on the effect of an ambiguous reference to counsel during custodial interrogation. Second, Petitioner is merely seeking another forum to relitigate the factual issue resolved in Respondent's favor that he did request counsel.

In Smith, this Court identified three approaches various jurisdictions had fashioned to deal with an ambiguous reference to counsel during custodial interrogation. One requires the interrogating officer to treat any reference to counsel as a request for counsel and to immediately terminate all questioning. A second mandates that the reference to counsel must first meet a threshold of clarity before it is treated as a request for a lawyer. The third requires the officer to stop questioning about the offense and to limit his inquiry to clarifying the ambiguous reference to counsel. 469 U.S. at 96, n. 9. After noting these three approaches, Petitioner suggests that the Florida court has aligned itself with the one which limits inquiry to clarifying the comment any time an equivocal reference to counsel is made. (Petition for Writ of Certiorari at page 16-17) This suggestion is incorrect, and this case does not clearly present the conflict issue.

The Supreme Court of Florida uses a combination of the threshold of clarity and limited inquiry approaches. Initially, the court uses the threshold of clarity approach to determine if the reference can be construed as a request for counsel. E.g., Norris v. State, 429 So.2d 688 (Fla. 1983) (defendant's asking officer if he thought he needed a lawyer not deemed a request for counsel); Donovan v. State, 400 So.2d 1306 (Fla. 1981)(defendant's asking if he could obtain a lawyer without cost not a request for counsel). Next, if the ambiguous reference is deemed to be a request for counsel, as

well as a desire to continue without counsel, the court permits a police officer to make inquiry to clarify without being guilty of initiating further interrogation in violation of the teachings of Edwards v. Arizona 451 U.S. 477 (1981). See, e.g., Valle v. State, 474 So.2d 796 (Fla. 1985); Waterhouse v. State, 429 So.2d 301 (Fla. 1983); Cannady v. State, 427 So.2d 723 (Fla. 1983). Here, the Florida court first evaluated the factual issue of whether Long's statement was a request for counsel and concluded that it met the threshold. Having determined that a request for counsel was involved, the court found a violation of Miranda and Edwards. The court noted that the detectives would not have been faulted had their inquiry been limited to clarifying the request because it was equivocal. However, the point of decision was the resolution of the factual issue of whether Long's comment constituted a request for counsel. The court has not clearly aligned itself with the position that any ambiguous reference to counsel restricts the officer to questions aimed at clarification of the comment. As stated in the opinion, the restriction of questioning to clarification is pertinent when the ambiguous comment can be interpreted as both a request for counsel and a desire to continue the interview without counsel.

Throughout the petition for writ of certiorari, the Petitioner talks of Long's "reference to counsel." This demonstrates the Petitioner's real desire here is to relitigate the factual issue of whether Long's statement was a mere reference to counsel or a request for counsel. The Supreme Court of Florida decided that question in Long's favor. More than ample evidence supports that decision, and this Court should not exercise its certiorari jurisdiction to again decide facts. Long tried to stop the questions about the homicides before he asked for a lawyer. When the subject of prostitutes arose, he said he did not want to talk about it. When the detectives continued to press the matter by showing Long photographs, Long then made his request for counsel.

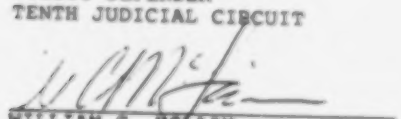
Furthermore, his prefacing the request with the comment that the complexion of the interview had changed evidences his change in attitude from one of cooperation to one of asserting his rights to silence and a lawyer. The detectives understood this change and started the process of talking Long out of his reluctance to talk. Price's comments show that he realized that Long was asserting his right to counsel. He asked Long, "Why would you need a lawyer?" Price admitted he tried to keep Long from thinking. All of these comments and actions before and after the actual request for a lawyer support the position that Long's statement was indeed a request for counsel. The Supreme Court of Florida correctly resolved the facts and applied Miranda and Edwards to reverse Long's conviction for a new trial.

CONCLUSION

For the above reasons, the Petition for Writ of Certicrari should be denied.

Respectfully Submitted,

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT



WILLIAM C. MCCAIN
ASSISTANT PUBLIC DEFENDER

Member of the Supreme Court
Bar and Counsel of Record

CERTIFICATE OF SERVICE

I, WILLIAM C. McLAIN, a member of the Bar of the Supreme Court of the United States and counsel of record for ROBERT JOE LONG, the Respondent, hereby certify that on April 20th, 1988, pursuant to Supreme Court Rule 28, I served a single copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Florida Supreme Court on each of the parties as follows:

On the State of Florida, the Petitioner, by depositing said copy in the United States Post Office, Tallahassee, Florida, with first class postage prepaid, properly addressed to PEGGY A. QUINCE, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammel Building, Tampa, Florida, 33602.

WILLIAM C. McLAIN
Assistant Public Defender

APPENDIX

ITEM	PAGE
Transcript of Motion to Suppress	A-1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

STATE OF FLORIDA, Plaintiff, -vs- ROBERT JOE LONG, Defendant.	CASE NO. 84-1725CFAES

PROCEEDINGS: MOTION TO SUPPRESS

DATE: 17 April 1985
Commencing at 2:55 p.m.

BEFORE: HONORABLE RAY E. ULMER, JR.
Circuit Judge
Sixth Judicial Circuit

PLACE: Courtroom 1
Pasco County Courthouse
Dade City, Florida

REPORTED BY: PHYLLIS M. DAVIS
Deputy Official Court
Reporter and Notary Public
State of Florida at Large

APPEARANCES: PHILLIP VAN ALLEN, ESQUIRE
Attorney for the State

RANDALL C. GRANTHAM, ESQUIRE
ROBERT A. NORGARD, ESQUIRE
WILLIAM K. EBLE, ESQUIRE
Attorneys for Defendant

ALSO PRESENT: Robert Joe Long

OFFICIAL COURT REPORTERS
Room 203 Pasco County Courthouse
Dade City, Florida 34297
(904) 521-4375

that was his motion. Request to proceed to the Motion to Suppress Statements at this time.

THE COURT: Let's do so.

(Thereupon, the following proceedings were held in open court.)

THE COURT: Mr. Van Allen, are you going to be going forward on this Motion, sir.

MR. VAN ALLEN: Yes, sir, Judge. I'd call Detective Price. I'll get him.

Thereupon,

ROBERT PRICE,

the witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VAN ALLEN:

Q Would you state your name, please.

A Sgt. Price.

Q And how are you employed, sir?

A I'm a supervisor, Tampa Police Department Homicide Bureau.

Q And how long have you worked for the Tampa Police Department?

A Approximately 15 years.

Q Did you have occasion on November 16, 1984, to be present or participate in the arrest of Bobby Joe Long?

A Yes, sir, I did.

Q Let me show you an Exhibit marked for identification as State's Exhibit B, see if you recognize that document.

A Yes, sir.

Q Is that the warrant upon which Mr. Long was arrested on November 16, 1984?

A Yes, sir.

Q If you would just for the benefit of the Court explain the background. First, where did the arrest take place?

A The arrest took place on North Dale Mabry in Hillsborough County, Tampa, at the Main Street Theater.

Q Okay. Who was present at the time of the arrest of Bobby Joe Long?

A Well, sir, I was not technically present when he was physically placed under arrest. I was in an adjacent parking lot in a car standing by to be advised that he had been arrested, was under physical control so to speak.

Q Why don't you explain to the Court the method or scheme that you had all had set up in order to take Mr. Long into custody.

A Well, sir, as a result of the forming of a task force on the 14th of November, after warrants such as search warrants and such were prepared, Lt. Terry from

Hillsborough County Sheriff's Office assigned me the responsiblities of supervising the serving of the search warrant on the vehicle and the arrest warrant.

Q Okay. And you had taken other officers from Tampa Police Department, Hillsborough County Sheriff's Office to the theater. They were positioned at the theater.

A No, sir. Mr. Long was under surveillance and being followed. We were monitoring his movement by radio and moving other additional units into position as a result.

Q And you actually came into contact with him there at the theater.

A Yes, sir.

Q When you were advised Mr. Long had been reduced to custody, what did you do?

A I supervised the impounding of Mr. Long's vehicle, assigned a detective to stay with the vehicle while it was being transported to Hillsborough County Sheriff's Office for storage. Also, witnessed the reading by Detective Cribb of the search warrant to Mr. Long.

Q Okay. Where did the reading of the search warrant to Mr. Long take place?

A In the parking lot. Well, sir, Mr. Long and Detective Cribb were in the back seat of an unmarked

police car in the parking lot in front of Main Street Theater.

Q That was the search warrant for the search of the vehicle?

A Yes, sir.

Q After that search warrant was read to Mr. Long, what happened then?

A Well, sir, Mr. Long was transported from the Main Street Theater to his apartment on East Fowler.

Q And how -- who transported Mr. Long?

A Detective Winsett was driving the vehicle, Detective Smith was the passenger in the front seat, I was in the back seat with Mr. Long.

Q During the period of time from his transfer from the Main Street Theater to his apartment, was Mr. Long questioned in any fashion about either the rape of Lisa McVey or any of the homicides which the task force was involved in investigating?

A No, sir, he was not.

Q What happened when you arrived at Mr. Long's residence?

A Upon arrival at Mr. Long's residence, he was somewhat concerned about the amount of people at the rear of the apartment. Estimating there was 15 - 20, probably more than that. One gentlemen had a camera. He was

concerned about the media, and I assured him at that point that no one here -- no one present was with the media, that we had gone through a great deal of trouble to see that they weren't there.

Q Okay. And what happened at Mr. Long's residence?

A After being there a short period, Mr. Long asked me if it was necessary for him to be there. Prior to that I advised him that Sheriff Heinrich had requested that he be present. He said he didn't want to be. I said, "Well, you don't have to be." He waived his right to be present.

I advised Lt. Terry who in turn gave me the okay to go ahead and have Mr. Long transported to the Hillsborough County Sheriff's Office.

Q Okay. Now, at the -- at Mr. Long's residence, how long did you stay there?

A I would be estimating. I'd say ten - fifteen minutes - twenty maybe.

Q And then you left there. And how did you get from Mr. Long's residence back to Hillsborough County Sheriff's Office?

A Unmarked vehicle.

Q Same people present, Smith, Winsett and yourself?

A Yes.

Q And what happened when you got to Hillsborough

County Sheriff's Office?

A Went upstairs to the Detective Division to the interview room and stood by and waited on Sgt. Latimer.

Q Okay. And who was -- the four of you still, Mr. Long, yourself and Winsett and Smith?

A Yes, sir, until shortly after we got upstairs. I'm not certain as to who stayed with him, but I left the room for probably three - four - five minutes. I'm certain that either Detective Winsett or Smith stood by with Mr. Long and removed the handcuffs.

Q How long did you have to wait for Sgt. Latimer?

A Again estimating, probably not more than five to ten minutes at the maximum.

Q And what happened upon Sgt. Latimer's arrival at the Hillsborough County Sheriff's Office?

A Mr. -- Sgt. Latimer and myself had maybe a minute to two minutes outside the door to agree upon some type of strategy in regards to interviewing Mr. Long in reference to this offense. We entered the room, had a Miranda warning form provided by the Tampa Police Department, standard form, which I in fact read to Mr. Long in its entirety.

Q I show you an Exhibit marked for Identification as State's Exhibit C, and ask if you recognize that document?

A Yes, sir.

Q Is that the document that you read to Mr. Long or is that a copy of the document?

A That is a copy, sir.

Q Does it appear to be an exact copy of the document?

A Yes, sir, it does.

Q All right. And you read the entire document as it's written to Mr. Long.

A Yes, sir.

Q After you read it to Mr. Long, what happened then?

A I asked Mr. Long to read it himself and sign it.

Q All right. And did you hand it to Mr. Long?

A Yes, sir.

Q All right. Did he look at it?

A Yes, sir.

Q Did he appear to read it?

A Yes, sir.

Q And did he sign it?

A Yes, sir, he did.

Q Who else signed that document?

A Myself as a witness and Sgt. Latimer.

Q And does that copy of the document appear to be in substantially the same condition it was in at the time

you obtained it from Mr. Long?

A Yes, sir.

MR. VAN ALLEN: At this time I move to introduce that as -- State's Exhibit C as State's Exhibit 2.

THE COURT: Any objection.

MR. GRANTHAM: No objection.

THE COURT: It will be received.

MR. VAN ALLEN:

Q By this point you had been in contact with Mr. Long for what, approximately an hour?

A Yes, sir.

Q Little less - little more?

A Probably a little more.

Q Okay. Did it appear to you during that period of contact that you had with Mr. Long that he was under the influence of an alcoholic beverage?

A No, sir.

Q Did it appear to you that he was under the influence of a narcotic?

A No, sir.

Q During that period of time, up until -- up to and including the time when you read the Consent to Interview form to Mr. Long, had he ever asked you to talk to a lawyer?

A No, sir.

Q As a matter of fact, had you questioned him at all?

A No, sir.

Q Had he ever given you any indication that he didn't want to talk to you?

A No, sir.

Q Following your obtaining this signed Consent to Interview, you did talk to Mr. Long for some period of time.

A Yes, sir.

Q During those conversations with Mr. Long, did -- did he ever tell you that he didn't want to talk to you any more?

A No, sir.

Q Did he ever unequivocably say, "I will not talk to you or deal with you without a lawyer"?

A No, sir.

Q Did Mr. Long ever indicate to you that he wanted to stop talking at any point?

A No, sir.

Q During the period of time that you were with Mr. Long that evening and into the morning, where was Mr. Long? In the interview room?

A Yes, sir.

Q What size room are we talking about?

A Estimating approximately probably 12 by 12 or less.

Q Okay. Did Mr. Long -- was Mr. Long offered cigarettes?

A Yes, sir.

Q Coffee?

A Yes, sir.

Q Cold drinks?

A Yes, sir.

Q Food?

A I believe he was asked if he was hungry. I don't believe he was.

Q Okay. Prior to beginning the interview with Mr. Long, did you explain to Mr. Long that things would go easier on him if he were to cooperate with you?

A No, sir. We had no conversation of any type.

Q Did you promise a reward, offer him leniency in order to get him to talk to you?

A No, sir.

Q Was he threatened in any way by you, display guns, rubber hoses, any of that stuff in order to get him to talk to you?

A No, sir.

Q Mr. Long talk to you about the death of a young lady by the name of Virginia Johnson that occurred in

A-11

Pasco County, Florida?

A Yes, sir.

Q During the time that you were interviewing Mr. Long, was the interview being tape recorded?

A No, sir.

Q Was any of the interview of Mr. Long tape recorded?

A Yes, sir, after the initial interview taken with notes.

Q Okay. During the period of time that the interview with Mr. Long was being tape recorded, was Mr. Long aware of the fact that it was being tape recorded?

A Yes, sir.

Q How do you know that?

A The tape recorder was sitting in front of him.

Q Did Mr. Long offer any objections to having the interview tape recorded?

A No, sir.

Q How long did the entire interview last?

A Probably some five hours or better.

Q Okay. During the period of time that Mr. Long was being interviewed, was there anyone present other than yourself, Sgt. Latimer and Mr. Long?

A No, sir.

Q Did Mr. Long reduce any statement to writing in

his own hand?

A No, sir.

MR. VAN ALLEN: That's all I have, Judge.

THE COURT: Cross-examination, Mr. Grantham?

MR. GRANTHAM: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. GRANTHAM:

Q Did you hear Detective Cribb read the warrant to Mr. Long?

A Yes.

Q Did you hear him read Mr. Long his Miranda rights?

A No, sir.

Q Is it your position they weren't read at that time?

A Pardon me?

Q Is it your position that he was not read Miranda at that time?

A At the time of the search warrant?

Q Yes, sir.

A I have no idea.

Q Or the arrest warrant.

A I have no idea.

Q You say Lt. Terry had appointed you as the one to represent your department.

A Yes, sir.
Q You weren't hand-picked by Sheriff Heinrich?
A Sir, we're talking about two different situations. You're referring to --
Q I'm referring to your duties as to the interrogation.
A That was by Sheriff Heinrich.
Q Excuse me, sir. That was by Sheriff Heinrich. Excuse me, sir.
You had interviewed Lisa McVey.
A Yes, sir, I was involved in an interview conducted --
Q You were present in the interview?
A Yes, sir.
Q Was Sgt. Latimer?
A Sir, I believe so but I'm not positive at this moment. I'm really not. I believe he was.
Q Miss McVey's description and stuff she told you was pretty general.
A Yes, sir.
Q In fact, you didn't -- you thought it sounded like a fairy tale when Miss McVey started telling you that.
A Not when she told me about it; when I heard about it. The initial offense when it was brought to my

attention seemed somewhat like a, as I said earlier, a fairy tale, yes, sir.

Q Okay. Detective Helms and Wolfe work with you?

A Detective Wolfe presently works for me. Detective Wolfe and Helms at that time were assigned to the task force, but they worked for Sgt. Pennington in the sexual assault squad.

Q At that time were they assigned to the task force?

A At the same time everyone else was, 14th of November.

Q You became aware that they had occasion to stop Mr. Long --

A Yes, sir.

Q -- the 15th.

In fact, they called you by phone or radio.

A By radio.

Q Did you tell them to stall as long as possible?

A Until I could find out what the situation was. When they contacted me, they felt very good about the description of the vehicle and Mr. Long.

Q You told them to stall there as long as possible?

A What I told them initially was there was not a lot we could do about it, to let Mr. Long go.

Q Okay. When you -- you rode in the same car as

Mr. Long from the theater to Mr. Long's house.

A Yes, sir.

Q Did you tell Mr. Long that you were in charge of that investigation?

A Yes, sir.

Q That wasn't true; was it?

A No, sir.

Q You told Mr. Long that you were not going to talk about the case until you got downtown; correct?

A Yes.

Q Okay. What case was that?

A That was the abduction/kidnapping/involuntary sexual battery of Lisa McVey or Rhodes.

Q There was no mention at this time of murder cases.

A No, sir.

Q In fact, that was purposeful, you did not want to mention that.

A No, sir. Yes, sir, it was purposeful.

Q Now, after telling Mr. Long that you weren't going to talk about this until you got downtown, --

A Yes, sir.

Q -- you had Mr. Long sitting in the back seat of the police car. As you got out leaving Mr. Long in there by himself, you said something to the effect of, "I want

to thank you for not hurting that little girl."

A That's exactly what I said.

Q And you left him in there to think about that; correct?

A Yes.

Q That was for the psychological affect you were hoping it would have on him.

A Yes, sir.

Q That's also why you left him alone in the car was for the psychological affect.

A Yes, sir.

Q You've had extensive training and on-the-job experience in interrogating people.

A Yes, sir, I would assume.

Q Seminars - classes - training.

A Yes, sir.

Q Approximately how many people have you interrogated in your 15 years with Tampa Police Department? Over a thousand?

A Sir, it would be very difficult to say, but a very large number, yes, sir.

Q Pretty good at it?

A That would be a matter of opinion.

Q Okay. Sheriff Heinrich hand-picked you to represent the whole Tampa Police Department.

A Yes.

Q And he hand-picked Sgt. Latimer to represent the whole Sheriff's Office; didn't he?

A Yes, sir.

Q Did you hear the search warrant being read to Mr. Long?

A Not word for word, sir. I would have to say I heard the search warrant being read, but not from the first line to the last line, no, sir.

Q Are you familiar with the search warrant?

A Not very.

MR. VAN ALLEN: Objection until we find out which one. There were 59 search warrants in this case.

MR. GRANTHAM: The one that was read to him at that time. I believe there was only one.

BY MR. GRANTHAM:

Q The search warrant that you were discussing earlier that you had heard.

MR. VAN ALLEN: Talking about the one of the car or the one of the house?

MR. GRANTHAM: The car.

MR.VAN ALLEN: You can talk about the one on the car.

MR. GRANTHAM: Thank you.

BY MR. GRANTHAM:

Q That search warrant as far as you know contained nothing about any of the murder cases; correct?

A Yes, sir.

Q It dealt exclusively with the McVey kidnapping and sexual battery.

A Yes, sir.

Q And the arrest warrant was based only on the kidnapping/sexual battery.

A Yes, sir.

Q Both of the first two search warrants, the house and car, were only the McVey kidnapping and sexual battery?

A Yes, sir.

Q When you were in the car with Mr. Long at his apartment, you told him that he was from West Virginia.

A I asked him.

Q Didn't you say, "I understand you're from West Virginia"?

A Yes.

Q Basically you were telling him you had knowledge of his background.

A I asked him if he'd ever been to Kermit, West Virginia.

Q Sir, what I'm asking you is: Instead of saying, "Where are you from?" you said, "I understand you're from

West Virginia," or something along that line.

A I told him -- I asked him, "I understand you're from West Virginia."

Q Right.

A Okay.

Q Okay. Is it true by telling a suspect that you're interrogating a little bit about their background, it builds your status in their eyes, makes them think you're more of an authority figure, more all knowing?

A Not under those circumstances I wouldn't say. I was not interrogating Mr. Long when I made that statement.

Q Weren't you shall we say preparing him to be interrogated, feeling him out, see if he was going to talk to -- seeing if he was going to talk, best way to talk to Mr. Long?

A I would agree with that.

Q You're saying the fact -- are you saying the fact that you -- you said, "I understand you're from West Virginia," as opposed to saying, "Where are you from?" that had no tactical or strategic significance?

A Not to me at the time, no, sir.

Q But you do agree it's an interrogation technique that you should appear to know a lot about your subject and let him know you know it.

A Yes, sir.

Q You told Mr. Long that you had gone to a lot of trouble to avoid having the press there; was that true?
A To a degree. Not as much as I had expressed it.
Q You told Mr. Long you thought the press were snakes; didn't you?
A Yes, sir.
Q Was that true?
A No, sir.
Q When you got into the interview room, you say you had Mr. Long sign this Consent to Interview.
A Yes, sir.
Q Okay. There are a couple blanks up on top.
A Yes, sir, three.
Q Who filled in those blanks, sir?
A I did, sir.
Q On the first blank you've written in Mr. Long's name, Bobby Joe Long.
A Yes, sir.
Q On the second blank you've written in your name and Sgt. Latimer's name; correct?
A Yes, sir.
Q And then it says, "Concerning the offense of . . ." blank, and there is what he had consented to be interviewed on.
A Yes, sir.

Q What's it say?
A Involuntary sexual battery or the abbreviation -- or the abbreviation for involuntary sexual battery and abduction.
Q Doesn't say anything about any murders there; does it?
A No, sir, it does not.
Q Again, that was done purposely, omitting any reference to the murders at that time.
A Yes, sir.
Q You did all or the vast majority of the questioning on the McVey case; didn't you?
A Yes, sir.
Q Okay. That went on for an hour - hour and a half.
A Approximately.
Q Basically during that time, there was really nothing but the McVey case discussed.
A Yes, sir.
Q He was cooperative with you at that time.
A Very much so.
Q He never mentioned anything about an attorney.
A No, sir.
Q Never mentioned anything about not wanting to talk about any specific area except for I think the sex

act; is that correct?

A With Lisa McVey.

Q Yes, sir.

A Yes, sir. Correct.

Q At that point after you had gotten pretty much all you could or all you needed or all you wanted about the McVey case, you felt it was time to start talking to him about the murder cases.

A Yes, sir.

Q You went out of the room to get a prop.

A Yes, sir.

Q And what was the purpose of the prop?

A Just an -- it's a method or technique utilizes always, if at all possible, if you can have some type of article that the subject is familiar with, and you walk in the room, it definitely has a psychological affect.

Q Since you really have no feelings about the press one way or the other, the fact that you told him you thought they were snakes, was that also designed for the psychological affect on Mr. Long?

A Yes, sir.

Q Now, I believe you left the room to go get the prop or look for a prop of some sort.

A Yes, sir.

Q Did Sgt. Latimer start talking to Mr. Long when

you got up to leave?

A He was talking to him when I left.

Q Okay. What was he talking about, sir?

A They were discussing physical evidence.

Q Such as blood, fiber, semen, hair, fingerprints, things like that?

A Yes.

Q Was he saying anything specific about them or just saying you know what fingerprints are, you know what tire prints are?

A Yes, sir, that type of thing.

Q He was still talking about that when you got back in there?

A Yes, sir.

Q At this point, still no mention of murders; correct?

A No, sir.

Q What prop did you find?

A I was provided five Polaroid photographs of five victims.

Q These were press release photos?

A Yes, sir.

Q Photos that had very likely been printed in the newspaper along with the story about these incidents.

A I couldn't say one way or the other whether any

of the five photographs had been printed in the press.

Q These are photographs that had been released to the press.

A Not to my knowledge. My personal knowledge, I don't know.

Q They were people in life, snapshots or even mugshots in some instances.

A No, snapshot type. One was off a drivers license I believe.

Q What did you do with those photos?

A I gave them to Sgt. Latimer.

Q Now, when you left the room, how far was Latimer sitting from Mr. Long?

A Probably three feet.

Q When you came back, how close was he sitting to Mr. Long?

A Probably half that distance, or less.

Q A foot?

A That's very close. I'd say 12 inches would be too close. I would probably say half of three and a half.

Q Is that also done for psychological affect during interrogations?

A Yes, sir.

Q These pictures were later shown to Mr. Long; correct?

A Yes, sir.

Q Okay. Now, when you handed them to Sgt. Latimer, did Mr. Long get a chance to see them or at least the top one when you were handing them to Sgt. Latimer?

A I would assume, yes.

Q You noticed visible consternation on Long's face at the point you handed the photographs to Mr. -- Sgt. Latimer.

A Yes, sir.

Q It was a start?

A Nothing radical, but there was a change in mood.

Q At that point, Sgt. Latimer has the photographs; correct?

A Yes, sir.

Q He's sitting a foot to a foot and a half from Bobby Joe Long.

A Yes, sir.

Q He asked Mr. Long if he'd ever picked up any prostitutes.

A Yes, sir, he did.

Q Mr. Long's response was Miami.

A "In the Miami area," I believe he said.

Q Sgt. Latimer said, "How about in Tampa?" Didn't he?

A Yes, sir.

Q And Mr. Long said, "I don't want to talk about that."

A No, sir.

Q "I don't want to answer that"?

A "I prefer not to answer that," I think he said.

Q "I would prefer not to answer that." Is that to the best of your recollection what he said?

A Yes, sir.

Q Now, most of these -- this series of homicides you were investigating known as the prostitutes murders or anything like that?

A No, sir.

Q Several of the girls had prostitution backgrounds.

A Sir, the nine homicides that were committed, one body was left in the City of Tampa. Sgt. Latimer can answer much better in regards to the personal background on the individual girls.

Q You're saying you don't have any personal knowledge?

A Yes, sir, I know for a fact that -- say I can go as far to say maybe three, you know, that I was positive of or sure of that had been either loose or background involving prostitution.

Q You said you remember him saying, "I prefer not

to answer that." Is that the same as, "I'd rather not answer that"?

A Yes, sir, I'd say it would be the same.

Q I was just referring to this supplement report. You're a co-author of this; is that correct?

A Yes.

Q You basically adopt and agree with everything contained in this seven-page supplement.

A Yes, sir.

Q And if in the supplement it indicates he said he'd rather not answer that question, it's more -- more than likely what was said rather than I would prefer.

A Rather not - prefer, I would assume.

Q You don't have any eye witnesses to these murders; do you?

A No, sir.

Q About all you had was some physical evidence; correct?

A Yes, sir.

Q Some fibers?

A Pardon?

Q Fibers. Some fibers.

A Yes, sir.

Q Some tire prints.

A Yes, sir, impressions.

Q Was -- although you can't speak for Sgt. Latimer, was Sgt. Latimer's purpose in bringing up the physical evidence a lead into the murders?

A Most definitely, yes, sir.

Q How about the prostitute question, was that also a lead in into the murders?

A Yes, sir.

Q So at this point the interview is shifting from McVey to the murder cases; correct?

A Yes, sir.

Q At the point that Sgt. Latimer mentioned prostitutes in Tampa, Mr. Long got pretty upset; didn't he? Uneasy?

A No, sir, I wouldn't say upset. There was an obvious change in mood. Not upset.

Q Uneasy?

A To a degree, yes, sir.

Q At that point, he had seen the photographs, or at least one of them.

A Okay.

Q You'd been talking about physical evidence and prostitutes in Tampa, basically decided it was now or never, and go into the murders.

A Yes, sir.

Q What happened at that point?

A Sgt. Latimer started to confront him about the murders.

Q Let me make sure I understand the chain of events. You've talked about McVey until it's talked out. You leave the room and Latimer starts up on the physical evidence. You leave the room. Come back in the room, Latimer is still talking about physical evidence.

A Yes.

Q You have the photographs in your hands.

A Yes.

Q You hand them to Latimer and Mr. Long probably sees them, there was some change in his attitude or demeanor.

A Yes.

Q And then at that point Sgt. Latimer mentioned prostitutes in Tampa to which he says, "I'd rather not answer that question."

A Yes, sir.

Q Is that all correct up to that point?

A Yes, sir.

Q And at that time, immediately after saying that, Sgt. Latimer begins handing him these photographs, and says, "Ever see this one? Ever see this one?"

A Yes, sir.

Q Did he not answer or deny it or what?

A He denied four of the photographs. He seemed to linger on the last one longer than the rest, then made a comment reference to he thought he'd maybe seen her around before or someone similar. And then more or less just unsure, totally unsure. No. Bottom line was, "No, I don't really know any of these people."

Q These were photographs of the murder victims.

A Yes, sir.

Q Obviously he would be attempting to talk about the murders.

A Yes, sir.

Q Mr. Long at this point have to go to the restroom?

A No, sir.

Q Sir, do you have your supplement with you?

A Yes, sir, I do.

Q Perhaps you could refer to Page 3, see if that refreshes your recollection. This isn't exactly a deposition, although it is a statement adopted.

A All right.

Q Right beneath the first paragraph, beneath the -- "Long at this time requested to use the restroom."

A Yes, sir. I -- we've talked about this before. I still hold my position in fact that there he did not ask, Mr. Long, to get up and go to the restroom, no, sir.

Q You can put your report away, sir.
A We did not.
Q You're saying you would not have allowed him to use the restroom at that point because you were ready -- getting ready to pop the big question, so to speak.
A We allowed Mr. Long to use the restroom after he had admitted to the homicides.
Q Okay. After Mr. Long said he'd rather not answer the question about Tampa prostitutes, after you showed him pictures of some prostitutes in Tampa, some maybe not prostitutes in Tampa, do you recall at that point Mr. Long saying "I think I might need an attorney"?
A Yes, sir.
Q Were those his exact words the best you recall?
A No, they weren't his exact words. Best of my recollection his exact words -- he looked at myself, made the statement, "The complexion of things sure have changed since you came back into the room."
Q And?
A And he continued by saying, "I think I might need an attorney."
Q Complexion of things have changed, hadn't they?
A Yes, sir.
Q You told him they haven't?
A I said, "Nothing has changed. I'm still being

honest with you."

Q Were you -- were you being honest with him in fact?

A Nothing had changed for me. I was pursuing the interrogation.

Q The interview hadn't changed. The fact that you'd gone from a sexual battery/kidnapping to a string of nine murders, that wasn't a change in the interview.

A Yes, sir, that's a change in the interview.

Q You told him nothing had changed. After he said, "I think I might need an attorney."

A That's true.

Q Did you attempt to clarify that?

A Yes, sir. I told Mr. Long that not to try and fool himself or me, that he knew upon his arrest at the Main Street Theater that the interview being conducted in regards to Lisa McVey would eventually turn into the investigation of the homicides of the nine women.

Q And yet you'd made every effort to not let him know that; isn't that true?

A Very true.

Q And still you told him that you were being honest with him and that nothing had changed at that point.

A Nothing had changed as far as my honesty in regards to what I was telling him.

Q Would it be fair to say your honesty or your lack of honesty with Mr. Long, for instance, you said you were involved in the press not being there, that wasn't true, you thought the press were snakes, that wasn't true, you were in charge of the investigation, that wasn't true, in addition to other statements; correct?

A Yes, sir.

Q In fact, you told him you were not going to lie to him. In fact, you had been lying to him; correct?

A Yes, sir.

Q Now, sir, when he made this statement, "I think I might need an attorney," this was a response to something Sgt. Latimer was saying or doing; right?

A Yes, sir, showing the photographs.

Q And before Sgt. Latimer could respond, you jumped in and said "nothing's changed"; correct?

A Yes, sir.

Q You felt you had built up a rapport over the hour and a half - two hour period.

A Yes, sir.

Q And you did that so he wouldn't have a chance to think about what he'd just said about the attorney.

A Not necessarily.

Q Do you recall giving a deposition March 22 before myself, prosecutor, Court Reporter? Page 94.

MR. VAN ALLEN: Objection, Judge. I don't know -- has the Court been provided copies of the depositions? I know I haven't.

THE COURT: I don't know.

MR. GRANTHAM: He's read them; they have been filed.

A About an hour before we were allowed to come in here.

THE COURT: Mr. Van Allen, do you want take a look at the court file?

(Pause.)

BY MR. GRANTHAM:

Q At Page 94, in the middle of your answer you're talking about what -- where he says,

> . . .'I think I might need an attorney. I said, Nothing's changed. We're still being honest. Now, you know that when we brought you down to talk to you about Lisa we would eventually confront you with these murders.' Question: And at that point he shook his head and --
>
> Answer: Sgt. Latimer continued. Sir, in all honesty, you don't -- the method is you don't give them a great deal of time to think about it. . .

Is that true?

A Yes, sir.

Q Was that your intention when he spoke up and made the attorney statement?

A If it wasn't, it should have been.

Q It was your intention to prevent him thinking about an attorney.

A Yes, sir. Not prevent him from thinking about an attorney.

Q Thinking about exercising his right to an attorney?

A No, sir.

Q Prevent him from thinking about what, sir?

A Anything. I'm controlling the conversation.

Q You want to prevent him from thinking?

A No, sir, not necessarily thinking. I don't think I could prevent Mr. Long from thinking.

Q Throughout this questioning, you used a lot of flattery on Mr. Long; didn't you? You're a good looking guy, intelligent guy, that kind of thing.

A To a degree, yes, sir.

Q Is it your position that you told him at the beginning, the very first McVey statement, you told him, we could do this one of three ways, tape record it, you can say it or you can write it down?

A Yes, sir.

Q Was Sgt. Latimer there when you say that, sir?

A I'm not positive.

Q Okay. If you told him those three options after he made the first very brief admission to the McVey case, would Sgt. Latimer have been there? In other words, did you talk to Mr. Long at any time about the McVey case without Sgt. Latimer being there?

A Discussing details, no, sir. There were probably remarks there made here and there. For instance, when he came out of the bathroom, he would make a remark he -- in fact, he asked several times about Carol who he called her who in turn was Lisa. Those situations.

Q I'm talking about at the very beginning, sir. Did you begin talking to Mr. Long about the McVey case, did he make any type of statement about the McVey case at the very beginning before Sgt. Latimer arrived?

A Not to my knowledge. I don't recall. No, sir, I don't.

Q And do you recall when you gave him these three options? Was that into the statement on McVey?

A Yes, sir, I assume it would be in that very early statement because we're fixing to start the interview. I prefer to tape; Bobby preferred not to.

Q Do you know -- do you have any idea whether Sgt.

Latimer was there when you discussed those three options?

A No, sir, I don't have any idea.

Q When Mr. Long said, "I think I might need an attorney," you jumped in, didn't even give Latimer a chance to respond; did you?

A Yes, sir.

Q Yes, sir, you're agreeing with your statement?

A I agree with your statement.

Q Now, when those photographs were brought in, the situation was fixing to change.

A Yes, sir.

Q And Mr. Long saw that even before you began talking to him about the photographs.

A That would be an assumption on my part, but I would say yes.

Q Pick up on -- you've been trained in body language and such at seminars.

A Yeah.

Q You picked up that he was kind of turning you off, arms crossed, sitting up, backed away from you.

A Yes.

Q When you say the questioning was based on honesty, that's what you wanted Mr. Long to believe. That's not reality; is it?

A Yes, sir.

Q Did you take any notes during this confession or this statement?

A No, sir.

Q Did you record your impression of the evening after it was over?

A Yes, sir.

Q Did you give those notes to Sgt. Latimer?

A Yes, sir.

Q After Mr. Long made this statement, I -- "I think I might need an attorney," that was before he had said anything about these murder cases; correct?

A Yes, sir.

Q After that time, you'd go out of the room occasionally, use the restroom, get a drink, things like that.

A Yes.

Q There were other people out -- milling around out there.

A Not outside the interrogation room.

Q In the immediate area?

A There were two female deputies I believe in a room maybe down the hall. But not directly outside, no, sir.

Q Did you go out and talk to the Sheriff or Detective Terry?

A Yes, which was in an another set of doors, not the room outside the interrogation room.

Q Did you mention the statement to them, "I think I might need an attorney"?

A I don't recall. No, sir, I don't -- not at that particular time, no, sir.

Q Did you tell Mr. Long after he made this statement, "I think I might need an attorney," said, "Bobby, our case is made. We don't need you. We've got all the evidence we need"?

A Yes, sir.

Q Were you speaking about the murder cases?

A Yes, sir.

Q At that point as far as you knew the only evidence you had on the murder cases was some fibers; wasn't it?

A No, sir, it was also a Vogue tire and tire impression.

Q That's the extent of it, the fact there was a Vogue tire and -- Vogue tire and fibers, you admit that's circumstantial, sir?

A Do I admit?

MR. VAN ALLEN: Judge, I want to object on the grounds of what was told to Long -- whether or not what was said to Mr. Long was truthful is basically

immaterial.

MR. GRANTHAM: It goes directly to coercion, involuntariness and freedom to exercise rights, what was told to Mr. Long.

THE COURT: Anything further?

Objection overruled.

BY MR. GRANTHAM:

Q You agree that -- your evidence that you had, fibers and tire prints; correct? -- and that's about all as far as you knew at that time.

A My personal knowledge?

Q Yes, sir.

A I would say yes.

Q So when you told Mr. Long that you had your case made, that wasn't true; was it?

MR. VAN ALLEN: Same objection.

A No, sir.

THE COURT: I understand. Be the same ruling.

BY MR. GRANTHAM:

Q Pardon me, sir.

A No, sir.

Q When you were at Mr. Long's apartment, when you were trying to I guess basically feel him out, see whether or not he was going to talk -- you can usually tell when somebody is going talk within five or ten minutes of

contact.

A Yes, sir.

Q Pardon me?

A Most of the time, yes, sir.

Q At that point after spending five or ten minutes with Mr. Long, you felt he was going to talk to you about McVey; right?

A Yes.

Q Sir, when Mr. Long made the statement, "I think I might need an attorney," did you consider that a request for an attorney?

A No, sir.

Q You thought it was like, hey, it's a nice day we're having today? What did you feel he was saying?

MR. VAN ALLEN: Objection. That's immaterial.

THE COURT: Sustained. I think that's going a little far afield, Mr. Grantham.

You can reframe your question.

MR. GRANTHAM: Thank you, Your Honor.

BY MR. GRANTHAM:

Q When he said that, did you say, "Why would you need an attorney"?

MR. VAN ALLEN: Objection, Judge.

MR. GRANTHAM: What --

MR. VAN ALLEN: I've got a feeling Mr. Grantham's

going to get into something that's contained in the deposition that obviously Mr. Grantham sees notes made by this witness. He claims he never said that. I object. I've checked, I've found nobody else that says that witness made the statement, "Why would you need an attorney?" Mr. -- rather, Detective Price has indicated that there was a mistake in the deposition, a mistake that belongs -- an error made by the Court Reporter.

And if that's what Mr. Grantham wants to get to, then I suggest we need to have something a little more definite than the Court Reporter's-- or the transcript of deposition to get this to it with.

Do you understand what I'm trying to say?

THE COURT: Yes, sir, I understand what you're saying.

He can ask the witness the question, see what the response is.

MR. VAN ALLEN: Very well

BY MR. GRANTHAM:

Q Did you say that, sir?

A No, sir, I did not.

Q Again referring to the deposition that you gave --

MR. VAN ALLEN: Objection, Judge.

THE COURT: Okay. I assume that there is an indication contrary in the deposition.

MR. GRANTHAM: Yes, Your Honor. Very clear. I believe Mr. Van Allen spoke or somebody spoke to the Court Reporter; she recalls it. If Mr. VanAllen spoke to people that were there, I don't know.

MR. VAN ALLEN: What I'm suggesting to you is that the detective has reviewed the deposition and indicated that in his recollection the Court Reporter is wrong, and Mr. Grantham knows that going into this cross-examination, and he's going try and use impeachment which is not proper impeachment. Even the witness says -- he knows now the witness is saying he never said it.

MR. GRANTHAM: Your Honor, he would be allowed to say that. This isn't a typographical error.

MR. VAN ALLEN: You're right.

MR. GRANTHAM: It's in the deposition. Is he accusing the Court Reporter of fabrication? If he denies it, says that's in by error -- I have an indication he said that.

MR. VAN ALLEN: I'm not saying it's typographical; I'm saying it's a flat mistake, it was never said.

THE COURT: Well, --

MR. EBLE: I think that goes to credibility.

THE COURT: Just what is your role in this, sir?

MR. EBLE: Your Honor, I'll sit back.

THE COURT: Please do.

Go ahead and ask your question, Mr. Grantham and we'll see what the gentleman answers. He's already made an answer, and apparently we've not an indication by the witness that the Court Reporter is in error. There are ways under the evidentiary rules to handle that, and I just invite your attention to that.

BY MR. GRANTHAM:

Q Do you remember giving a deposition on March 2 of 1985?

A Yes, sir, I do.

Q Okay. Do you recall making this statement,

He said, 'I think I might need an attorney."

I said, 'Why would you need an attorney?'

Do you recall that answer?

A No, sir.

Q Are you saying you never made that statement at deposition?

A No, sir, I never made that statement during that deposition.

Q Are you saying you didn't make that statement at -- where Mr. Long was being questioned?

A Absolutely not.

MR. GRANTHAM: I don't believe I have anything further.

MP. VAN ALLEN: Move to strike the last exchange from the Record. Mr. Grantham has the burden to go forward and show this witness did in fact make that statement. He's trying to impeach and he's doing it improperly. There are ways under the Evidence Code to take care of this, and if he's not going to do it, I suggest you strike it from the Record or -- move that you strike it from the Record.

THE COURT: Care to speak to that, Mr. Grantham?

MR. GRANTHAM: Your Honor, we could call the Court Reporter as a witness, have her review her notes.

THE COURT: I'm going to deny the motion for purposes of this hearing only. It is something we'll have to approach if and when we get to a point that it would be a further part of these proceedings.

MR. VAN ALLEN: Yes, sir.

THE COURT: And I put counsel on notice we'll need to be prepared to go forward at that time if we get to that point.

MR. GRANTHAM: Okay, Your Honor. I will also tell the Court that the Court Reporter does recall the

statement being made.

THE COURT: Thank you.

Mr. Van Allen, do you have questions of this witness, sir?

MR. VAN ALLEN: No, sir.

THE COURT: May the officer be excused?

MR. VAN ALLEN: I'd ask that he remain.

THE COURT: If you'd return to the witness room, please, sir.

Further witnesses, Mr. Van Allen.

MR. VAN ALLEN: Yes, sir. Sgt. Latimer.

Thereupon,

RANDALL LATIMER,

the witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VAN ALLEN:

Q Would you state your name, please.

A Randall Latimer.

Q You're employed as a detective with the Hillsborough County Sheriff's Office.

A Yes, I am.

Q And how long have you worked for the Hillsborough County Sheriff's Office?

A Thirteen years.

Q And were you so employed on November 16, 1984?
A Yes, I was.
Q Were you present at the time on November 16, 1984, when Bobby Joe Long, Robert Joe Long, was arrested in Hillsborough County?
A I wasn't present when he was arrested.
Q Do you know when he was arrested?
A Yes.
Q Where were you at at the time?
A I was in my office.
Q Why were you in your office? What were you doing?
A Catching up on paperwork.
Q When did you, if ever, come in contact with him?
A I came into contact with him at his apartment on East Fowler Avenue.
Q Why did you happen to be there?
A I was out there waiting for him to come to the scene where they were going to execute a search warrant on his apartment.
Q How long did you remain at the apartment with Mr. Long?
A About ten or fifteen minutes.
Q After your stay at the apartment, where did you go?

A Back to the Sheriff's Office.

Q And did you come in contact with Mr. Long at the Sheriff's Office?

A Yes, sir, I did.

Q Who was present when you came in there, Sergeant?

A Robert Joe Long, Sgt. Price, Tampa Police Department.

Q Where did that take place?

A Interview room, Sheriff's Office.

Q When you came -- what was the purpose of your being? There why were you with Mr. Long and Bob Price?

A To conduct an interview with him.

Q What was -- what were you going to talk to him about? What was your intention?

A We were going to talk about the arrest warrant that had just been issued on him and executed on him.

Q Okay. Was Mr. Long advised of his Constitutional rights at that time?

A Yes, he was.

Q Show you an Exhibit marked as -- marked in evidence as State's Exhibit Number 2. Do you recognize this document?

A Yes, sir, that's a copy of the form that we used, myself and Sgt. Price, to advise Bob -- Mr. Long of his Constitutional rights.

Q Was that document read to him in its entirety?
A Yes.
Q Mr. Long read it himself?
A It was handed to him, he was instructed to read it.
Q Did he subsequently read and sign it?
A Yes, sir.
Q You and Price likewise signed it.
A Yes, sir.
Q Did it appear to you at the time you came into contact with him that he was under the influence of an alcoholic beverage?
A No, sir.
Q Or narcotic?
A No, sir.
Q And did you in fact interview Mr. Long?
A Yes, I did.
Q How long did that interview take?
A Approximately five hours.
Q During the period of time of the interview, you, I assume, asked questions of Mr. Long and Mr. Long answered your questions.
A Yes, sir.
Q Were his answers coherent, make sense in light of the questions that you were asking him?

A Yes, sir.

Q Was Mr. Long promised anything in order to get him to talk, offered a reward or told things would be better for him or if he cooperated, anything like that?

A No, sir.

Q Was he threatened in any manner?

A No, sir.

Q During the period of time that you were with Mr. Long during the interview, did he at any time indicate to you that he didn't want to talk to you any more?

A No, sir.

Q He wanted to stop talking to you?

A No, sir.

Q Was he offered cigarettes during the interview?

A Yes, sir. He said he didn't smoke.

Q Food - drink?

A Yes, sir.

Q Did -- at any time during the course of the interview, did he make an unequivocal statement to the effect, "I want a lawyer," or "I won't deal with the police without a lawyer" or anything like that?

A No, sir.

Q Since November the 15th and 16th, 1984, have you received any written correspondence from Mr. Long?

A Yes, I have.

Q On approximately how many occasions?
A Personally I've received two of them that were addressed to me.
Q And basically what were these correspondences about?
A He was asking me to get clothing for him to wear for his court appearances and to contact him.
Q And have you seen other documents that Mr. Long has written or indicated that he has written?
A Yes, I have.
Q I show you an exhibit marked as -- for Identification as State's Exhibit D. First of all, have you seen this document before?
A Yes, sir. That's a copy and there is some underlining.
Q Did you ever see the original of that document?
A Yes, sir.
Q Did you ever read the original of that document?
A Did I read it?
Q Yes.
A Yes, sir.
Q Would you read that document, Exhibit D, please, and see if you detect any changes in the document from the original of that document.
A No, sir, it appears to be a copy of it.

Q And do you recognize the handwriting of that document?

MR. GRANTHAM: Objection, Your Honor. No predicate laid whether he's a handwriting expert, has any expertise.

THE COURT: Mr. Van Allen.

MR. VAN ALLEN: Cite the Court to several cases. Branch v. State, 118 So. Page 18, another case, Pitman v. State, 41 So. 385, Thalheim (phonetic) versus the State, 20 So. 930, all of them indicating a person who is familiar with the handwriting of an alleged writer or questioned document may give opinion testimony with respect thereto although they are not experts in the field of handwriting analysis.

MR. GRANTHAM: Your Honor, I point out those cases are extremely old. Since that time, the expertise and training and status of the law in that area have come a long way. If he intends to prove that was in fact the writing of Mr. Long, I just don't think he's qualified.

THE COURT: Do you have cases?

MR. GRANTHAM: Not offhand. I saw no handwriting experts or the person that got that letter -- honestly caught off guard. I just don't feel the predicate's been laid.

THE COURT: Objection be overruled.

MR. VAN ALLEN: Thank you.

BY MR. VAN ALLEN:

Q Do you recognize the handwriting in this letter?

A Yes, sir.

Q Who do you believe that handwriting to be?

A Mr. Long's.

MR. VAN ALLEN: Your Honor, at this time I move to introduce the letter as State's Exhibit Number 3.

THE COURT: Any objection other than previously noted, Mr. Grantham?

MR. GRANTHAM: Not other than previously noted. I would just strenuously object on those grounds.

THE COURT: All right, sir. Be the same ruling.

MR. VAN ALLEN: That's all the questions I have of Sgt. Latimer.

THE COURT: Cross-examination, Mr. Grantham.

CROSS-EXAMINATION

BY MR. GRANTHAM:

Q You're the supervisor of the homicide squad.

A Yes, sir, I was.

Q Thirteen years with the Hillsborough County Sheriff's Office.

A Yes, sir.

Q Basically represented the Hillsborough County

Sheriff's Office in your activity during the arrest of Mr. Long.

A Yes, sir.

Q You've had training and experience in interrogating people.

A Yes, sir.

Q Approximately how many people have you interrogated, sir? Estimate a thousand, a hundred, five hundred?

A Hundreds.

Q When you arrived at the police station there, Sgt. Price was already in the investigation room with Mr. Long.

A Yes, sir.

Q And that room's about 9 by 9.

A Yes, sir, something like that.

Q I believe the first subject of conversation was the Lisa McVey case.

A Yes, sir.

Q I show you State's Exhibit Number 2. This is the copy of the Consent to Interview form.

A Yes, sir.

Q Do you know who filled in these blanks in the top, sir?

A Sgt. Price.

Q Okay. He filled in the blank where it says that, "I, Bobby Joe Long, do hereby consent to be being interviewed. . ." by yourself, ". . . concerning the involuntary sexual battery/abduction. . ." Any mention of the murders on there?

A No.

Q This is on the McVey case?

A Yes.

Q Did you all mention the murders to him at the beginning?

A No, sir.

Q Any of the murders?

A No, sir.

Q Did you avoid any mention of those?

A Yes, sir.

Q When you read him his rights and he signed that, you were talking to him only about the McVey case.

A Yes. Yes, sir.

Q Sgt. Price did all the talking or the vast majority of the talking during the McVey statement.

A Yes, sir.

Q Mr. Long was cooperative with you.

A Yes, sir.

Q Almost eager to talk on that subject.

A He was cooperative. He indicated he wanted to

talk about it.

Q Then after he had pretty much talked out the McVey case, you started talking to him; correct?

A Yes, sir.

Q First subject you started talking to him about was physical evidence.

A Yes.

Q Now, as far as these murder cases, did you all have any eye witnesses?

A No, sir.

Q Okay. About all you had on those cases were physical evidence.

A Yes, sir.

Q Fair to say when you started talking about physical evidence with Mr. Long, that was leading into the murder cases?

A Yes, sir.

Q Sir, there was some photographs that were showed to Mr. Long right about this time. Where did those photos come from? Did you have them or did Sgt. Price go out and get them?

A I think I had them with me. I'm not real sure where they came from.

Q Do you recall before you showed them to Mr. Long Mr. Long seeing them or seeing the top picture while they

were in your hands or in Sgt. Price's hands?

A No, sir, I don't.

Q You don't recall that?

A No, sir.

Q Now, during the McVey questioning Sgt. Price asked him, "Did you commit any other crimes?" and he denied that; correct?

A Yes, sir.

Q Several of the girls that were found, their bodies, were they involved in prostitution?

A Yes, sir.

Q After talking to him about physical evidence, you talked to him about prostitutes.

A Yes, sir.

Q You asked him if he ever picked up any prostitutes.

A Yes, sir.

Q He said, "In Miami."

A Um-hmm.

Q You said, "How about in Tampa?" And he said, "I'd rather not talk about that."

A Yes, sir.

Q Then you showed him pictures of these girls.

A Yes, sir.

Q Some of whom were prostitutes in Tampa.

A Yes, sir.

Q Asked him on each one did he know this one, did he know this one.

A Yes, sir.

Q Those were the photographs that were used in press releases.

A Yes, sir.

Q He said he didn't recognize any of the girls.

A Correct.

Q You were making notes during most of this, sir?

A Yes, sir.

Q Was Sgt. Price?

A I don't know if he was or not.

Q Did Sgt. Price later give you some notes that he had made of this five or six hour incident?

A Just a portion of the handwritten supplement for me to call in to word processing to be typed.

Q A portion of the handwritten supplement, referring to the seven page supplement?

A Yes, sir.

Q Did -- he made some notes regarding what he recalled and you incorporated those into the supplement.

A Correct.

Q Do you recall a deposition on March 22,.

Question: Did he turn over any notes to you

after the interview?

Answer: No. No, sir.

Now you're saying he did have some notes that he gave you?

A It wasn't notes he gave me; it was a -- we wrote the supplement out ahead of time so I could call it into -- on the telephone to word processing. It wasn't notes that he gave me that he took. I interpreted that question as notes that he took during the interview. There was no notes that he took during the interview that he turned over to me.

Q Okay. Again, back to that same page, page 20, this is the question immediately before that:

Question: In addition, you also used some notes that Price had written down after the interview.

Answer: I don't know what Price wrote down after the interview.

Same question,

Question: Did he turn over any notes to you after the interview?

Answer: No. No, sir.

A When you asked me those questions, I thought you were talking about notes that he took -- actually took during the interview. He turned over no notes to me that he took during the interview.

Q All right, sir.

Immediately after you showed him those photographs and he denied knowing any of them, he had to go to restroom.

A Yes, sir.

Q Do you recall how he let you know "I think I might need to use the restroom"?

A He said, "Can I use the restroom."

Q And you let him use the restroom at that point.

A Yes, sir.

Q Are you certain of that, sir?

A Certain of what? I let him use the restroom.

Q At that point?

A Yes, sir. When he asked if he could use the restroom, I let him use the restroom.

Q Upon his return from the restroom, you started talking about physical evidence.

A Yes, sir. Yes, sir.

Q Hair, fiber, semen, blood, things along those lines.

A Yes, sir.

Q As far as you knew, did you have any semen evidence tying him in?

A We had semen evidence. Nothing to tie him in at that time -- at that point.

Q How about blood, did you have any blood evidence at that time to tie him in?

A No, sir.

Q Fingerprints?

A No, sir.

Q At that point, did you have any hair that would tie him in?

A We had hair samples at some of the crime scenes.

Q At that point the only thing that you really had was fiber connecting the -- some of the bodies and the McVey case. Had you gotten the F.B.I. report back analyzing Mr. Long's -- the sample taken from his car?

A No, sir.

Q So really you had no fiber evidence at that point in time at Mr. Long's interview; did you?

A No, sir.

Q Only thing was a tire impression and you had information that was a Vogue tire impression and you had information that Mr. Long had a Vogue tire.

A Yes, sir.

Q That's basically the only physical evidence you had at that point to connect Mr. Long to any of these cases.

A Yes, sir.

Q You then talked to him about how good the F.B.I.

is. Talked about the F.B.I. laboratory.

A Yes, sir.

Q Yes, sir?

A Yes, sir.

Q At that point, do you recall -- now this is after the McVey case is all talked out and you've discussed physical evidence with him, you've asked him about prostitutes, you've shown him the pictures of some of the bodies of the women whose bodies you've found and he wants to get up and go out of the room. You took him to the restroom, brought him back, at that point do you recall him making the statement, seems like -- "The complexion of things sure has changed. I think I might need an attorney"?

A Yes, sir.

Q Did you get an attorney for him?

A No, sir.

Q Did you tell him, "Do you want an attorney or not?"

A No, sir.

Q Did you readvise him of his rights?

A No, sir.

Q Did you have him sign another one of these Consent to Interview forms with murder on the top of it

A No, sir.

Q In fact you tried to talk him out of having a attorney.

A No, sir.

Q Sgt. Price did.

A No, sir.

Q Do you recall Sgt. Price almost as soon as Mr. Long said that saying, "Nothing's changed. You knew this was all going to happen. We've been honest with you. Be honest with us"?

A Yes, sir.

Q That was before you could even respond to Mr. Long, wasn't it, when he said, "I think I might need an attorney"?

A He responded before I did, yeah.

Q You're saying that neither of you all tried to talk him out of having an attorney. Is it fair to say you didn't encourage it either?

A I didn't think he requested an attorney.

Q You think he was just making conversation?

A I felt like he was sitting thinking out loud.

Q That he was thinking about he needed an attorney?

A He thought he might need one.

Q Did you ask him, "Do you want one or not?"

A No, sir, I didn't.

Q At the time you read him his rights, -- did you read him his rights?

A Sgt. Price.

Q At the time Sgt. Price read him his rights, the only thing that he had heard mentioned or seen in writing or heard read was the abduction/sexual battery of Lisa McVey; is that true?

A Yes, sir.

Q And it was at some point an hour to an hour and a half after that that the prostitute murders started being talked about; correct?

A Yes, sir.

Q And there was no break there; was there? There was no -- wasn't "I'm going put you in a cell. We'll come back and talk to you in half an hour."

A No, sir.

Q There was no break. When he said, "I don't want to answer that," you immediately started showing him the pictures; correct?

A Yes, sir.

Q There was no break when he said, "I think I might need an attorney." You or Sgt. Price immediately started talking, "Nothing's changed. Nothing's changed."

A Yes, sir.

Q Three times you went over physical evidence with

him, "Do you understand what physical evidence is?" Three separate conversations broken up by other subject matter; is that true?

A Yes, sir.

Q After the McVey thing when Sgt. Price got up to leave and you started doing the talking, there was kind of a shift in the interview at that point from McVey to the murders. You were talking about physical evidence as a lead in.

A Yes, sir.

Q Since the interview was shifting to another subject, did you read him his rights at that point?

A No, sir.

Q Did anybody ever tell Mr. Long that he could tape record that first interview on McVey and what followed?

A Ask the question again. I'm sorry.

Q Did anybody ever tell Mr. Long he had a choice, he could have this conversation tape recorded or he could write it down or you could write it down?

A I didn't tell him that. I didn't hear anybody else tell him that.

Q Now, on the McVey case it was pretty much a narrative. Mr. Long didn't need a whole lot of prompting, pretty much a narrative, this, this and this.

A Yes, sir.

Q Then on the discussion of the murders, that was pretty much a question and answer type thing; wasn't it?

A No, I wouldn't say it was pretty much question and answer. There was questions asked and answers given, but I didn't have to go question by question through it.

Q Pretty much of a question and answer thing on the murders.

A No, sir.

Q No. During the course of this five or six hour conversation, Mr. Long tell you he'd rather not talk about any sex acts?

A Yes, sir.

Q Okay. Did you talk to him about any sex acts?

A No, sir.

Q Okay. Because he said he'd rather not talk about it?

A Yes, sir.

Q During the conversations on the murder cases, he couldn't really tell you what order or day or date that these people were taken; could he?

A He could tell the order, but he wasn't sure of days or the dates.

Q A lot of his statement was pretty much in general "Oh, that's what I did with all of them." Did he say that pretty often?

A Say what?

Q "That's what I did with all of them. Then I did this and this and then this." He said, "Same as the others."

A Yes, sir.

Q You had some contact later with Mr. Long; is that true?

A Yes, sir.

Q When you were trying to get some hair, blood and semen samples.

A Yes, sir.

Q Mr. Long didn't want to come out of his cell without his attorney.

A Correct.

Q You talked to him into coming without his attorney.

A I explained to him he didn't need his attorney.

Q He came out after you talked to him; correct?

A Yes, sir.

Q Fair to say when you were talking to Mr. Long, you wanted him to believe that you had a lot of evidence against him?

A Yes, sir.

Q When Sgt. Price got up and left the room, did you move any closer to Mr. Long?

A No, sir.
Q You didn't?
A No, sir.
Q How far were you sitting from him, sir?
A Maybe five feet - six feet.
Q You weren't sitting three feet from him before Sgt. Price left?
A No, sir.
Q And you didn't move to within a foot and a half before Sgt. Price came back?
A I didn't move during the entire time. Whether I was three feet or five feet from him, whatever the distance was, it remained the same.
Q As far as the case concerning Virginia Johnson, the body found in Pasco County, were you in the area when that was found?
A No, sir.
Q Okay. You -- in your mind, that statement, "I think I might need an attorney," was nothing so you didn't attempt to clarify it; correct?
A No, sir.
Q You and Sgt. Price been working together for a long time, interacting pretty much on a daily basis?
A Yes, sir.
Q Somebody call you while Detective Wolfe and Helms

had Mr. Long on the side of the road on November 15?

A I was called after the stop had been made.

Q It wasn't while the stop was made?

A No, sir.

Q Prior to questioning Mr. Long, were you familiar with the psychological profile that had been prepared by the F.B.I.?

A Yes.

Q You spoke with F.B.I. Agent Jacobson who prepared it.

A Yes, sir.

Q Told you certain facets of the makeup of this person that he felt had done these crimes.

A Yes, sir.

Q Did you use information in that report during your interrogation of Mr. Long? For instance, authority figure, was that in there and did you use that?

A Yes, sir.

Q How about what to wear, did he say what to wear there?

A There was information as to -- as to how you should or shouldn't dress.

Q Should dress in browns or tans?

A Not a flashy-type dresser.

Q And you dressed in accordance with that.

A Yes, sir, I was already dressed for the day when the arrest went down.

Q And it matched?

A Yes, sir. I'm not a flashy dresser.

Q Told you even when to interview him, the person that did this was probably going to be a nocturnal person, best to interview him into the late hours of the night.

A Yes, sir.

Q And you did that, too?

A Yes, sir.

Q When Mr. Long made that statement, "I think I might need an attorney," you didn't refer back to the Consent to Interview and say, "You've already waived that right," anything like that.

A No, sir.

Q Didn't make any mention of that Consent to Interview.

A No, sir.

MR. GRANTHAM: Nothing further of this witness, Your Honor.

THE COURT: Further questions, Mr. Van Allen.

MR. VAN ALLEN: No, sir.

THE COURT: May the officer be excused?

MR. VAN ALLEN: I'd ask he remain, Your Honor.

THE COURT: If you'd return to the witness room.

Further witnesses?

MR. VAN ALLEN: No, Your Honor.

THE COURT: Witnesses for the defense?

MR. GRANTHAM: Your Honor, I -- I believe I would be prepared if the Court thinks it's relevant to call the Court Reporter and have her read back her notes of the deposition to show that Sgt. Price did make that statement.

THE COURT: Well, problem we run into, there won't be a Court Reporter to take the Court Reporter to start with; and, number two, --

MR. VAN ALLEN: I had understood the Court overruled my objection anyway.

THE COURT: Yes, I have for purposes of this proceeding only. But if we get to the point that it becomes relevant before the jury, if we get to that point, I think we need to proceed according to Hoyle as far as any -- in keeping with the rules, how to handle that type of a problem.

MR. GRANTHAM: Other than that, we have no witnesses, Your Honor.

THE COURT: Arguments?

MR. GRANTHAM: Yes, Your Honor. I would ask the Court consider a very brief recess.

THE COURT: Ten minutes?

MR. GRANTHAM: Ten minutes would be fine.

THE COURT: Take exactly ten minutes.

(Thereupon, Court recessed at 6:48 p.m.)

(Thereupon, Court reconvened at 6:58 p.m.)

THE COURT: Thank you very much. Argument?

MR. GRANTHAM: Yes, sir.

THE COURT: Mr. Grantham.

MR. GRANTHAM: Your Honer, I understood the State had the burden in this Motion to prove the statements were voluntary and knowing and intelligent.

THE COURT: Mr. Van Allen.

MR. VAN ALLEN: Your Honor, I'd suggest to the Court that Mr. Long was advised of his Miranda rights, never made an unequivocal demand for an attorney and waived his right for an attorney and that is referenced in the Record.

MR. GRANTHAM: Your Honor, I wish I could be that brief.

Your Honor, the obvious starting point is Miranda v Arizona. I'm sure the Court's aware of the case.

THE COURT: Yes, sir.

MR. GRANTHAM: That's 384 US 436, which states that before an admission or confession or statement is admissible, inculpatory or exculpatory, the person must be advised of certain rights and offered an

opportunity to exercise those rights.

In the case before the Court today, there were rights read to Mr. Long, but only as to an abduction and an involuntary sexual battery, the McVey case. That was very clear, all the witnesses said that they purposely omitted any mention of any murders up until an hour and a half into the interrogation, an hour and a half removed from this Consent to Interview which specifically says involuntary sexual battery and kidnapping.

Miranda also speaks to police techniques. It -- citing a book of instructions, Methods for Criminal Interrogation, it cites different methods that police use to overcome the will of a person who does not wish to make a statement. For instance, they first tell him to tell the truth. Also they note that: "To be alone with the subject is essential. . ." which is exactly what Sgt. Price noted,

> ". . . to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist."

The Supreme Court said,

> "Patience and persistence, at times relentless questioning, are employed."

Five hours of questioning we have testimony to.

The manual goes on to say,

> . . . The interrogator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.'

That was done here, expertly used deceptive strategems.

Again, Your Honor, the police admitted this; he continuously lied, and the police lied to Mr. Long throughout the entire contact.

Miranda states that:

> If the individual indicates in any manner at any time prior to or during the questioning, indicates he wishes to remain silent, the interrogation must cease.

Your Honor, we would submit that at the point when Mr. Long was questioned about Tampa prostitutes and he said, "I don't want to talk about that," that was an invocation of his right to remain silent.

Further, Miranda says:

> If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.

Miranda states unequivocably that his rights must "be scrupulously honored." They must -- he must have

an opportunity to exercise these rights throughout the interrogation, not just at the beginning. The opinion is clear that a person may reassert a right that he has waived.

In support of the submission that Mr. Long may very well have waived his rights on the McVey case, the sexual battery/kidnapping, but not waived it as to the -- any of the murder cases, case of Shriner v State, 386 So.2d 525, Supreme Court of Florida, 1980. There, it was just the opposite, the person asserted his right to remain silent as to the first crime, and then he waived it as to the second.

And we have just the opposite situation. Mr. Long very well may have waived his right as to the first, but he did not waive his right as to the second. He never had an opportunity. He was never advised of his rights. If anything, he attempted to invoke both his right to remain silent and his right to an attorney.

Case of Bowen v. State, 404 So.2d 145, Second District Court, holds that when a person said I don't want to talk about this or that, that was an invocation of his right to remain silent and isn't a waiver, any statements obtained after that would not be admissible.

Spradley v. State, another Second District Court case, 442 So.2d 1039, where the police obtained a statement from a person, and then asked him, "Anything you want to add?" that was held to be an invocation of his right to remain silent, and the statement was suppressed even though the rights were read again and they were supposedly waived before the other statement.

State v. Dixon, Second District Court, 348 So.2d 333, deals with two co-defendants. One says, "No, man, I ain't going to talk. I ain't going to talk," that was an invocation of his right to remain silent. His statements were suppressed.

His co-defendant said, "I don't want to talk to you about it," and that, too, was an invocation of his right.

Your Honor, what we have here is Mr. Long, he's first confronted with physical evidence which the police admit is a lead into these murder cases, a definite shift in the interview, then asked about prostitutes. He says, "In Miami." They say, "What about Tampa?" I don't want to answer that. "I'd rather not talk about that. I don't want to talk about that." Did the police stop that interrogation? No, they continued immediately showing him photographs

of prostitutes in Tampa. There is definitely interrogation that occurred after he invoked his right to remain silent on that subject, prostitutes in Tampa.

Likewise, Your Honor, the case of State v Wininger, Third District, 412 So.2d 1114, person said, "I don't believe it. I want to go home," after he'd been accused of a crime, and then said, "Can I?" "Sure, you'll be able to, I want to talk to you some more." The Court found that that was a clear invocation of rights, unequivocal. All he said was, "I want to go home. Can I?" And the Court suppressed the statement in there.

Your Honor, the next United States Supreme Court case upon which I rely is Edwards v Arizona, 451 US 477. There, Mr. Edwards said, "I want an attorney before making a deal." He didn't say, "I want an attorney before I talk to you. I want an attorney before I confess." "I want an attorney before making a deal." The Court in that case held that that was an unequivocal invocation of his right to remain -- his right to an attorney. And the Court states:

> . . . If he requests counsel, the interrogation must cease until an attorney is present . . .

It differentiates the right to counsel from the right to remain silent. The right to counsel is a more important right; it's a more strict standard. To determine a waiver, it

> . . . must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right. . .

United States Supreme Court said.

The Court specifically notes,

> . . . the right to counsel was a prime example of those rights requiring the special protection of the knowing and intelligent waiver standard, . . .

And

> . . . when an accused has invoked his right to have counsel present, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if. . .

they had re-advised him of his rights which was not done here.

And there is a Florida Supreme Court case, Cannady v. State, 427 So.2d 723. They held in that

case, Florida Supreme Court case, where the Defendant said, "I think I should call my lawyer" that was enough they held to invoke the right to an attorney. However, in that case, the officer sought to clarify the statement, and then the Appellant kept on crying and crying said, "I didn't mean to kill the man. I didn't mean to kill the man." What we have here are the police doing what they are supposed to. Where there is some sort of statement asking for an attorney, they must either cease questioning or they're limited to clarifying what may be an equivocal response in their minds.

Your Honor, the Supreme Court case of Cannady v State cites three out-of-state cases. One is 290 N.W.2d 312, Wentela v. State, where the defendant said, "I think I need an attorney," or "I think I should see an attorney." There the Florida Supreme Court -- citing with approval, the Court held that it was ". . . a sufficient request for counsel."

Likewise in People v. Traubert cited in Cannady with approval, 608 P.2d 342, "I think I need to see an attorney" was an unequivocal invocation of the right to counsel.

And in State v. Blakney, 605 P.2d 1093, Supreme Court of Montana, the defendant while being

interrogated in regard to murder stated ". . . maybe I should have an attorney." That effectively asserted his right to counsel in those cases.

Some Florida cases that deal with specific statements by defendants of whether or not they were an invocation of their rights, Harris v. State, Fourth D.C.A., 396 So.2d 1180. The defendant asked, ". . . is I want an attorney. . ." Now or later, the Court in holding that that was an invocation of his right to counsel stated:

> The prohibition. . .

talking about Miranda and Edwards,

> The prohibition applies where the assertion is made by indirection or suggestion, as well as in the case of direct positive assertion.

Case of Thompson v. Wainwright, 601 F.2d 768, Fifth Circuit, 1979, holds that the only thing, quoting,

> . . . whenever even an equivocal request for an attorney is made by a suspect during custodial interrogation, the scope of that interrogation is immediately narrowed to one subject . . .

And

> Further questioning thereafter must be limited to clarifying that request until it is clarified. . .
>
> . . . the limited inquiry permissible after an equivocal request for legal counsel may not take the form of an argument between interrogators and suspect about whether having counsel would be in a suspect's best interest or not.

Your Honor, we've had testimony today that immediately following Mr. Long's statement "I think I might need an attorney," the police did anything but try to clarify it. Although they denied it, I would submit they actually talked Mr. Long out of it. Now, there is an indication they said why would you want one. The witness denies ever saying that. They also said, "Nothing's changed." They admitted that was a lie. "We've been honest with you." They have admitted that was a lie. Instead of clarifying, they lied to him in an attempt to get him not to assert his right that he had already asserted.

In Norris v. State, Supreme Court of Florida, 429 So.2d 688, the defendant asked the police officer do I need an attorney or not. The police officer stated if you want an attorney I will stop questioning you. The

Supreme Court of Florida held that was a request for counsel, but it was slightly ambiguous and the police, although they have no duty to convince a person that they need an attorney, they must respond affirmatively to a request for counsel. And again that was not done in this case.

State v. Prosser, First D.C.A., 235 So.2d 748 defendant says, "I probably need an attorney. I'm charged with murder." There the police even tried to clarify that statement, but the First District Court held, no, his right had been invoked and he had not waived it.

There is one U. S. Supreme Court case that deals with this issue, Smith v. Illinois, 83 L Ed 2d 488. There they held that the right to counsel was invoked when the police officers advised the defendant of his rights and then asked him, "Do you understand." He said,". . . yeah, I'd like to do that."

The police officer finished the rights, and then asked him again. He said, well, yes and no whether he wanted his attorney. The U. S. Supreme Court held that follow-up questions cannot be used to show ambiguity when there is an initial request for an attorney. The only thing that follow-up questions can do is clarify that request if it is in fact

equivocal.

And Singleton v. State, 344 So.2d 911, the defendant asked maybe I should ask my mother if I need an attorney, and the Court held that was an invocation of her right to an attorney.

Bain v. State, defendant "was unsure of himself" is the only indication in the opinion, and again the Court held that there could be no waiver in a situation such as that and any statements had to be suppressed.

Your Honor, it's axiom -- citing Buehler v. State, 381 So.2d 746, that the Court must indulge every reasonable presumption against waiver.

Here Mr. Long, first as to the prostitutes, said "I don't want to talk about it." They started showing him pictures.

Case of Tierney v. State, Second D.C.A. out of Pasco County, 404 So.2d 206, held that where a police officer read a co-defendant's interview to the other defendant, that was interrogation. There is no way that showing pictures of murder victims would not be interrogation after he had asserted his right to remain silent on that particular issue.

Also, Jones v. State, Second D.C.A., 346 So.2d 639, he began reciting his investigation and he got

the defendant to talk, and that also was held to be interrogation.

Your Honor, the State -- in Cason v. State, Second D.C.A., 373 So.2d 372, the State has a heavy burden of establishing with unmistakable clarity the admissibility of statements in a criminal case.

If there was an equivocal response -- and we submit that there was an unequivocal response -- but if it is equivocal, the only path the police could go in at that point is to clarify, to ask him, "Do you want an attorney? Do you want to remain silent?"

Drake v. State, Supreme Court of Florida, 441 So.2d 1079, 1984, states that the only path after a equivocal response is clarification. That was not done here.

Your Honor, I anticipate the State will refer to the letter that was admitted over my objections, and it has some statement regarding -- something about the confession. We submit that is not the issue here. The issue is not voluntariness at that point as far as the Fifth Amendment rights go. Miranda says statements can be voluntary, but if the Miranda rights are not scrupulously honored, then the statement is inadmissible.

Likewise, the police cannot use attendant

circumstances that are calculated to delude the prisoner as to his true position or exhibit improper or undue influence over him.

We submit that is what was present throughout the contact with the police. He was lied to from his first contact to his last contact with the police.

Lastly, Your Honor, cite the case of Fiske v. State, Supreme Court, Florida, 366 So.2d 423, which states that any ambiguities, any doubts, in criminal proceedings have to be resolved in the defendant's favor, and if there is any question whether it's equivocal or not, it must be held to be unequivocal. In any event, if it is equivocal the only path the police could take at that point was to clarify.

We submit that the statements should be suppressed.

THE COURT: Thank you very much, sir.

Mr. Van Allen.

MR. VAN ALLEN: Judge, the issue appears to be clear. I'd like to pick up and cite to the Court again the case Mr. Grantham cited, Norris versus the State, found at 429 So.2d 688. There are a couple of things that occurred in this case. The police gave Mr. Norris the standard Miranda warnings including his right to the appointment of counsel. Norris then

asked the detectives interrogating him whether or not he needed an attorney. Detectives responded that they couldn't make that decision for Mr. Norris and if Norris wanted an attorney he would quit talking to him at that time. Norris thereafter said that he would answer questions but only the ones he wanted to answer. The Court found that that was a valid waiver, not an equivocal waiver but a valid waiver of Mr. Norris' constitutional rights under Miranda.

And they didn't waste a minute in determining that it was all right for a defendant to pick and choose what questions he wanted to answer, as in the situation with Mr. Long where, when asked about prostitutes, said he didn't want to talk about them. But he -- the Court says,

> . . . He now contends that the state did not demonstrate a valid waiver because the police never answered his question of whether or not he needed an attorney.

And finds

> . . . that the response given by the detective did not make further conversation with Norris either impermissible or inadmissible. . . The failure to answer Norris' question neither lulled him into

waiving an attorney or prevented his asking for one.

And the Court goes on to say, the

> Investigating officers must respond affirmatively to a request for an attorney, but they are not required to try to convince a defendant that he needs an attorney.

In this situation, the defendant made the statement "I think I need an attorney." It is not the obligation of either Detective Price or Detective Latimer to sit down and figure out whether or not that means I think I need one or I think I don't need one. It's simply not a request for a lawyer.

I point out the case again cited by Mr. Grantham, the case of Cannady versus the State, 412 So.2d. 723, again a Supreme Court of Florida case. In this case, the context in which appellant said he thought he should call his lawyer

> made it impossible. . .to determine whether . . .

or not he was requesting a lawyer.

> While expressing a desire to speak to an attorney, which presumably indicates a wish not to answer any more questions, appellant was also readily confessing his guilt by

repeatedly saying he did not mean to kill the man, thereby indicating a desire to continue talking.

Again, same situation we have here. The defendant says, well, I think I might need a lawyer, and then he says -- he goes on to talk about how he killed these women.

In Cannady the factual situation was that,

> According to McKeithen. . .

Mr. Cannady

> . . . started acting nervous so McKeithen asked him outright if he killed Carrier. . .

The defendant, Cannady, started

> . . . crying and said, 'I didn't mean to shoot that man, I didn't mean to kill that man, it wasn't supposed to happen that way.' McKeithen said that appellant kept crying and then said, 'I think I should call my lawyer.' McKeithen said that he then ceased his questioning and placed a telephone in front of appellant. McKeithen testified that appellant continued crying and kept saying, 'I didn't mean to kill the man. It wasn't supposed to happen that way.' McKeithen asserted that three or four minutes later he

asked appellant if he wanted to talk and appellant said yes.

The cop did absolutely nothing wrong. The man said I need to talk to a lawyer, I didn't mean to kill him, McKeithen waited and later asked do you want to talk about it, he said yes. The Court held that was not a equivocal waiver, it was a valid waiver of his rights under Miranda.

There is a case entitled Bryan F. Jennings versus the State of Florida, 413 So.2d 24, in this particular case, Mr. Jennings was being questioned by a man named Hudepohl who was from the homicide squad. He read the dissertation set forth in the footnotes of the case. He read the standard Miranda warnings to the defendant, after each one asking whether or not the defendant understood, he finally said,

> Are you willing to proceed without an attorney being present to represent you? In other words, do you want to go ahead and talk to us now?
>
> Answer: Yeah, but let me wake up a little bit first this is not good when I just woke up. No, I don't think so; I definitely have to have a lawyer for this. This is too heavy for me to do.

Question: Are you fully awake and understand everything that I'm saying to you?

Answer: I'm still half asleep right now, but I'm awake enough to, hey, this is a heavy charge, and I'm not even going to sit here and take this on myself and try to talk about it. Huh-uh, not this kid. Now if it something like a burglary, I wouldn't mind it. But I mean Christ, this -- you're talking about murder.

Mr. Porter: That's right, we are.

He goes on and on and on.

That's right we are.

The witness: Jesus, look, I've done a lot of things a lot of them weren't always nice. I ain't ever killed nobody, especially not no seven year old girl.

The officer goes on.

Well, it's your right to exercise however you want to do it, you know. All we -- all -- you know we're giving you opportunity to talk to us, but we're required by law to advise you of what your rights are before we do. You know, we're more than willing to

sit here and listen to your side of the story and ask you questions and let you answer them, but we have to advise you of your rights. And before we can ask you any questions, you have to intelligently waive those rights. . . If you like, and if it's your decision not to talk to us without a lawyer, fine, we'll terminate the interview. If it's your decision that you want me to read, re-read something, or whatever you want, you just, you tell us, but we have to know. It's your decision to make, Bryan, you know; I can't make it for you. Like I say, we're here giving you the opportunity to talk about it and, you know, it's your decision to make.

All right.

The defendant says,

All right. Tell me -- tell you what, give me about five minutes, walk down here to the bathroom to get some water and clear my head a little bit --

Question: Absolutely.

Answer: -- and we'll talk.

And the Court held that was a waiver of the

defendant's rights under Miranda.

Case of Waterhouse versus the State found at 429 So.2d 301, Supreme Court again, 1983, in the Waterhouse decision,

> On January 9, after making certain statements in the car on the way to the station, appellant said,'I think I want to talk to an attorney before I say anything else.' At this point the officers ceased questioning him. Then, when appellant was being processed into the jail on the charge of murder,. . .

the Detective asked him

> . . . whether he would like her to come to his cell, talk to him, and answer any questions that he might have.

Court pointed out

> He seemed interested, so detectives. . . went to talk to him at 2:00 a.m. At this point appellant became emotionally upset and made certain statements described previously. The conversation ended when appellant said, 'I think I'd like to talk to my attorney. Would you all come back tomorrow?' Then on the following day there

was further interrogation eliciting statements entered into evidence.

The Court held that the statement taken the next day did not violate the defendant's right to remain silent or his request for an attorney.

The defendant cited Edwards as has been cited here. The Court said,

> Edwards does not apply here because appellant did not express a desire to deal with police only through counsel. His statements that he should talk to an attorney, were at most equivocal requests to consult with counsel. The officers were not prohibited from initiating further communication for the purpose of clarifying appellant's request.

In King versus the State, another Supreme Court case, 1983, found at 436 So.2d, Page 50, in this situation, -- if I can finds this situation -- In King, the Supreme Court again distinguished Edwards to allow into evidence confessions to a Daytona Beach police officer and Orlando police officer, all the defendant had said prior to the statement is, "I think I need an attorney." After hearing that, the detective stated, quote,

> 'We're only here to talk to you about what the detective from Daytona Beach talked to you about.'

And the defendant confessed. The statement was not taken in violation of Edwards, and the Court stated,

> We conclude that appellant gave the statement to the Orlando police officers voluntarily, with full knowledge of his right to counsel, and with knowledge that by giving the statement under the circumstances, he was waiving his right to counsel. This was clearly not a situation as that in Edwards, where the defendant stated, 'I want a attorney before making a deal, and was consequently advised that he had talk to the detectives.

Again found that the statement made to the police officer was voluntarily and was done after a waiver of Constitutional rights even in light of the statement made by the Defendant King, 'I need to talk to a lawyer.'.

Judge, we can go on citing cases. Mr. Grantham cited cases in Cannady that came from South Dakota and I believe Montana. In the Cannady case, the Court also cites in a paragraph after those cases that Mr.

Grantham cited a series of cases from other jurisdictions where it was held that the same types of requests or statements that were made did not constitute a waiver.

For instance, as Mr. Grantham pointed out,

> Although the defendant's statement,'I think I need to see an attorney' was neither 'sophisticated' nor, perhaps, in 'legally proper form,' it was sufficient . . . to put the police officers on notice . . .

of the right to counsel, from Montana.

From the State of Illinois, the defendant's remark was

> 'Maybe I ought to have an attorney. Maybe I need a lawyer. Maybe I ought to talk to an attorney," was not a request for counsel.

In that case, cert. was denied by the United States Supreme Court. What the case says it is not what the defendant says, it is the context in which the defendant makes the statement. It's like most other close questions in any matters of law. It is the circumstances of a particular decision or a particular situation that give rise to the determination as to whether, considering all the facts and circumstances,

the defendant had his rights tromped on.

In the Cannady case, the Court says at page 728,

> . . . the context in which appellant said he thought he should call his lawyer made it impossible for Officer McKeithen to determine whether appellant was requesting to see an attorney. While expressing a desire to speak to an attorney, which presumably indicates a wish not to answer any more questions, appellant was also readily confessing his guilt by repeatedly saying he did not mean to kill the man, thereby indicating a desire to continue talking to the police without the benefit of an attorney's presence. When a person expresses both a desire for counsel and a desire to continue the interview without counsel, further inquiry is limited to . . .

determining what the officer -- or what the defendant wants to do.

In this situation, Officer McKeithen put the phone in front of him, the man continued to talk. And the situation we have here, the officer didn't say anything other than we've been honest with you, you be honest with us, and the defendant at that point

continued to talk about the murdered girls.

Again I'd suggest to the Court that it's a case-by-case situation. The only other evidence that we have that points to what the defendant's state of mind was on the night of November 16, 1984, when he confessed is part of a letter that was identified during the course of the hearing as coming from the pen of Bobby Joe Long in the letter that he says,

> They had tire prints, hair, fiber, blood samples, . . .

And then goes on up in the corner,

> I mean they had me, so I thought if I cooperate, it would go better on me. I was wrong, but I learned if I ever get out shoot first, ask questions later, and don't say shit to the police except I want a lawyer. Live and learn but I don't forget.

I think that this speaks directly to what the defendant's state of mind was on the night of the 16th. He was never promised anything; the defendant waived his rights. He decided he'd cooperate and now he thinks he's done the wrong thing. It's too late. I suggest that the motion be denied.

THE COURT: Anything else, gentlemen?

MR. GRANTHAM: Just a few brief points.

THE COURT: Are you going to be brief?

MR. GRANTHAM: I thought the Court asked if we had anything further.

THE COURT: I didn't know you had further argument.

MR. GRANTHAM: In every one of the State's cases where there was a statement, they either stopped, gave them a phone, or clarified the request which is exactly what was not done here.

And as far as the letter that was read that Mr. Long had allegedly written, they had him -- I would point out everything that he based that on -- almost everything was a lie from the police officers and that would show he was deluded and misled into making any statement beyond the Fifth Amendment issue.

THE COURT: That prompt any further comment, Mr. Van Allen?

MR. VAN ALLEN: No, sir.

THE COURT: Gentleman, number one, I thank you for your efforts. Number two, I'm going to find from the evidence that there's been no violation of Mr. Long's Constitutional rights, that the statement sought to be introduced was freely and voluntarily made. Motion will be respectfully denied. I thank you.

STATE OF FLORIDA

COUNTY OF PASCO

I, PHYLLIS M. DAVIS, Deputy Official Court Reporter in and for the Sixth Judicial Circuit of the State of Florida,

DO HEREBY CERTIFY that proceedings were had in the captioned matter at the time and place set forth herein; that I was authorized to and did report stenographically said proceedings and testimony, and that the foregoing pages, numbered 1 through 212, inclusive, constitute a true and correct transcription of said proceedings and testimony as had.

WITNESS MY HAND AND SEAL this 11th of June, 1985, at Dade City, Pasco County, Florida.

Phyllis M. Davis

PHYLLIS M. DAVIS
Deputy Official Court
Reporter